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CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE AMERICAN BEVERAGE
ASSOCIATION, CALIFORNIA RETAILERS
ASSOCIATION, CALIFORNIA STATE
OUTDOOR ADVERTISING
ASSOCIATION,

Plaintiffs,

vs.

THE CITY AND COUNTY OF SAN
FRANCISCO,

Defendant.

Case No. 3:15-cv-03415 EMC

**JOINT STIPULATION AND [PROPOSED]
ORDER SUSPENDING BRIEFING
SCHEDULE, TAKING SUMMARY
JUDGMENT HEARING OFF CALENDAR,
VACATING CASE MANAGEMENT DATES,
PROVIDING FOR DISMISSAL OF THIS
ACTION, AND CONDITIONALLY
EXTENDING THE TIME WITHIN WHICH
PLAINTIFFS MAY FILE A MOTION FOR
FEES AND COSTS**

Hon. Edward M. Chen

Trial Date: December 6, 2021

Pursuant to Civil Local Rules 6-2 and 7-12, Plaintiffs The American Beverage Association, California Retailers Association, and California State Outdoor Advertising Association (“Plaintiffs”), and Defendant The City and County of San Francisco (“Defendant”) (collectively, the “Parties”), hereby stipulate as follows:

WHEREAS, on May 4, 2021, San Francisco Supervisor Shamann Walton introduced an Ordinance, File No. 210496 (“the Repeal Ordinance”), to repeal Article 42 of the San Francisco Health Code, which codifies the Sugar-Sweetened Beverage Warning Ordinance at issue in this action;

WHEREAS, Plaintiffs have agreed not to seek fees or costs if Article 42 is repealed, subject to their right to file a motion for fees or costs if Defendant enacts a new ordinance requiring advertisers to include health warnings on advertisements for sugar-sweetened beverages within the next four years;

WHEREAS, the City’s agreement to a four-year extension of Plaintiffs’ time to file a motion for fees or costs is subject to approval by the San Francisco Board of Supervisors by ordinance (“the Extension Ordinance”);

WHEREAS, the Parties anticipate that enactment of the Repeal Ordinance and the Extension Ordinance may take several months in the ordinary legislative process;

NOW, THEREFORE, in the interest of judicial economy and good cause showing, the undersigned parties, by and through their counsel of record, hereby agree and stipulate, and the Court hereby orders, as follows:

1. The remaining briefing schedule on the Parties’ cross-motions for summary judgment and *Daubert* motions is suspended and the hearing on those motions, currently scheduled for June 24, 2021, is taken off calendar;

2. The dates for the pretrial conference (October 9, 2021) and trial (December 6, 2021) are vacated;

3. The parties may stipulate to, or any party may file an administrative motion requesting, reinstatement of a briefing schedule and summary judgment hearing, and to the resetting of dates for the pretrial conference and trial, if both the Repeal Ordinance and the Extension Ordinance are not enacted;

4. If the Repeal Ordinance and Extension Ordinance are enacted, the following additional provisions shall apply.

5. Plaintiffs shall dismiss this action within seven days of the effective date of the Repeal Ordinance or the date of enactment of the Extension Ordinance, whichever date comes latest;

6. The time within which Plaintiffs may file a motion seeking an award of fees or costs shall be extended to four years from the date the action is dismissed pursuant to the preceding paragraph, and the Court shall retain jurisdiction to adjudicate such a motion, but Plaintiffs shall not file a motion for fees or costs unless, within that time, Defendant enacts a new ordinance requiring a warning label or other mandatory disclosure on advertising for sugar-sweetened beverages that concerns or relates to alleged health risks associated with or attributed to sugar-sweetened beverage consumption;

7. Plaintiffs' right to file such a motion as provided herein is without prejudice to Defendant's right to oppose that motion on grounds other than timeliness; and

8. Except as otherwise ordered in a ruling on any such motion, each party shall bear its own fees and costs.

The parties respectfully request that the Court enter an Order approving this Stipulation.

IT IS SO STIPULATED.

Dated: May 7, 2021

DENNIS J. HERRERA
City Attorney
WAYNE SNODGRASS
JEREMY M. GOLDMAN
Deputy City Attorneys

By: /s/ Jeremy M. Goldman
JEREMY M. GOLDMAN
Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO

Dated: May 7, 2021

LATHAM & WATKINS LLP

By: /s/ Michael E. Bern
Steven M. Bauer
Richard P. Bress (*pro hac vice*)
Michael E. Bern (*pro hac vice*)
George C. Chipev (*pro hac vice*)
Caroline A. Flynn
Shannon Grammel (*pro hac vice*)
Attorneys for Plaintiffs
THE AMERICAN BEVERAGE ASSOCIATION AND
CALIFORNIA RETAILERS ASSOCIATION

1 Dated: May 7, 2021

GIBSON, DUNN & CRUTCHER LLP

2 By: /s/ Joshua D. Dick

3 Theodore B. Olson

4 Andrew S. Tulumello

5 Helgi C. Walker (*pro hac vice*)

6 Charles J. Stevens

7 Joshua D. Dick

8 Attorneys for Plaintiff

9 CALIFORNIA STATE OUTDOOR ADVERTISING
10 ASSOCIATION

11 **ATTESTATION CLAUSE**

12 Pursuant to Civil Local Rule 5-1(i)(3), I hereby certify that I obtained in the filing of this
13 document the concurrence from all parties whose electronic signatures appear above.

14 Dated: May 7, 2021

15 /s/ Jeremy M. Goldman

16 JEREMY M. GOLDMAN

17 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

18 DATED: _____

19 _____
Hon. Edward M. Chen

20 United States District Judge